

## Message Text

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ACTION NEA-10

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 4499

INFO AMEMBASSY ISLAMABAD

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

LIMITED OFFICIAL USE NEW DELHI 3490

E.O. 11652: N/A

TAGS: PINT, IN

SUBJECT: GOI MOVES TO REDUCE JUDICIARY'S INDEPENDENCE THROUGH  
APPOINTMENTS

1. WE ARE POUCHING TO ADDRESSEE POSTS COPIES OF A RESOLUTION  
PASSED BY THE SUPREME COURT BAR ASSOCIATION OF INDIA (SCBA)  
CRITIZING THE GOI FOR REFUSING TO ELEVATE SEVERAL SENIOR  
HIGH COURT "ADDITIONAL" JUDGES TO PERMANENT JUDGESHIPS.  
THE RESOLUTION REFERS TO A TWO-DECADE-OLD CONVENTION IN WHICH  
VACANCIES ON THE HIGH COURT ARE TRADITIONALLY FILLED BY  
THE SENIORMOST (IN TERMS OF SENIORITY) AMONG THE ADDITIONAL  
JUDGES WHO SERVE ONLY TEMPORARILY. THE SCBA RESOLUTION NOTES  
THAT ON FEBRUARY 28, 1976 THE GOI SUPERCEDED A SENIOR  
ADDITIONAL JUDGE, R.N. AGGARWAL, BY ELEVATING HIS TWO JUNIORS  
TO PERMANENT JUDGESHIPS ON THE DELHI HIGH COURT AND STATES:  
"THIS ASSOCIATION VERY STRONGLY FEELS THAT THE NON-CON-  
FIRMATION OF THE SENIOR ADDITIONAL JUDGE, R.N. AGGARWAL OF  
THE DELHI HIGH COURT, IS LIKELY TO FURTHER ERODE THE  
INDEPENDENCE OF THE JUDICIARY AND IS LIKELY TO BE TAKEN  
AS PRTDSURISING THE JUDICIARY BY THE EXECUTIVE." THE  
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RESOLUTION CALLS ON THE PRESIDENT TO CONFIRM "IMMEDIATELY"

AGGARWAL'S POSITION AS A PERMANENT JUDGE, AND LISTS THE NAMES OF FIVE MEMBERS OF A SCBA DELEGATION WHO WILL SEEK AN INTERVIEW WITH MRS. GANDHI TO DISCUSS THE RESOLUTION.

2. COMMENT: THE SCBA IS THE MOST PRESTIGIOUS BAR ASSOCIATION IN THE COUNTRY. NEARLY EVERY ADVOCATE OF THE SUPREME COURT IS A SCBA MEMBER. ITS OFFICE BEARERS HAVE TRADITIONALLY INCLUDED SOME OF THE TOP ADVOCATES IN THE COUNTRY.

3. THE GOI'S DECISION TO SUPERCEDE AGGARWAL IS UNDOUBTEDLY RELATED TO AGGARWAL'S DECISION AGAINST THE GOI IN THE KULDIP NAYAR HABEAS CORPUS CASE LAST FALL. THE GOI ACTION FOLLOWS THE SUPERCESSION OF ADDITIONAL JUDGE U.R. LALIT OF THE BOMBAY HIGH COURT LAST JANUARY 16. ON THAT EVENT THE BOMBAY BAR REPORTEDLY ANNOUNCED THAT "THIS ACTION COULD ONLY HAVE BEEN ACTUATED BY THE CENTRAL GOVERNMENT'S DISAPPROVAL OF JUDGEMENTS GIVEN BY MR. LALIT WHICH DID NOT FIND FAVOR WITH THE GOVERNMENT." LALIT'S SUPERCESSION WAS BELIEVED TO BE THE FIRST OF ITS KIND SINCE INDEPENDENCE; AGGARWAL'S IS THE SECOND. THEIR SUPERCESSION INDICATES THAT THE GOI INTENDS TO USE APPOINTMENTS AS WELL AS OTHER MEANS TO REDUCE THE INDEPENDENCE OF THE JUDICIARY. SAXBE

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